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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FCC 94-323

In the Matter of)	
)	MM Docket Nos. 94-149
Policies and Rules Regarding)	and 91-140
Minority and Female Ownership of)	
Mass Media Facilities)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 15, 1994; Released: January 12, 1995

By the Commission: Commissioner Barrett issuing a statement.

Comment Date: April 17, 1995

Reply Comment Date: May 17, 1995

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I. INTRODUCTION

1. We initiate this proceeding to explore ways to provide minorities and women with greater opportunities to enter the mass media industry, specifically including the

broadcast, cable, wireless cable and low power television services.¹ We invite comment as to whether we should modify existing minority-oriented mechanisms and adopt new initiatives to increase ownership of these mass media facilities by minorities and women. Our purpose in doing so is to further the core Commission goal of maximizing the diversity of points of view available to the public over the mass media, and to provide incentives for increased economic opportunity.²

2. It has long been the judgment of Congress that promoting minority ownership of broadcasting and cable television facilities serves to enhance the diversity of viewpoints presented on our nation's radio and television stations and cable systems. Since fiscal year 1988, Congress has included in the Commission's appropriations legislation language requiring that the Commission's minority ownership policies remain

¹"Minority" means Black, Hispanic, Native American, Alaska Native, Asian and Pacific Islander. See 47 C.F.R. § 73.3555(e)(3)(iv).

²This item incorporates in full all outstanding issues raised in the Further Notice of Proposed Rule Making in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992). (Incubator Further Notice). It also incorporates one issue raised by commenters responding to Notice of Proposed Rule Making and Notice of Inquiry in MM Docket No. 92-51, 7 FCC Rcd 2654 (1992) (Capital Formation Notice). See Comments of Minority Business Investment Corporation (MBIC) in MM Docket No. 92-51. As discussed in Section III, *infra*, MBIC proposes adopting a processing guideline that presumes the bona fides of SBA-licensed Specialized Small Business Investment Companies. Other issues raised in that Docket will be addressed in a separate Notice of Proposed Rule Making adopted concurrently with this Notice. See Notice of Proposed Rule Making in MM Docket Nos. 94-150, 92-51 and 87-154, FCC 94-324 (adopted December 15, 1994) (Attribution Notice).

In addition, this Notice involves issues raised in two petitions for rulemaking and two petitions for declaratory ruling currently pending with the Commission. See Petition for Rule Making of the National Association for the Advancement of Colored People, the League of United Latin American Citizens, the National Hispanic Media Coalition and the National Black Media Coalition (filed September 18, 1990); Petition of the Coalition to Improve Tax Certificate Policies (filed December 8, 1994); Petition for Declaratory Ruling Regarding Issuance of Tax Certificates, Transworld Telecommunications, Inc. and Transworld Wireless T.V. Tampa Bay, Inc. (filed January 29, 1993); Petition for Declaratory Ruling Regarding Extension of the Commission's Minority Tax Certificate Policies to Minority-Controlled Video Programmers, Nathan W. Garner and Scholastic, Inc. (filed November 18, 1994). These petitions propose, inter alia, that the Commission modify its minority tax certificate policy to further benefit minority owners. We will place these petitions into the record in this proceeding.

in place.³ The courts, too, have recognized the link between minority ownership and diversity of viewpoint. For instance, the United States Court of Appeals for the District of Columbia Circuit observed in 1973 that "it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proven to be significantly influential with respect to editorial comment and the presentation of news."⁴ More recently, the Supreme Court determined that the nexus between minority ownership and programming diversity is "corroborated by a host of empirical evidence."⁵

3. Based on this principle, the Commission has implemented a number of policies, in addition to awarding a minority preference in comparative broadcast hearings,⁶ designed to facilitate the entry of minorities into broadcasting and to otherwise promote their increased ownership of electronic mass media. In 1978, the Commission instituted its minority tax certificate and distress sale policies, both of which provide incentives to owners of broadcast and cable television properties to sell their stations to

³ See Pub. L. No. 100-202, 101 Stat. 1329 (1987); Pub. L. No. 100-459, 102 Stat. 2186 (1988); Pub. L. No. 101-162, 103 Stat. 988 (1989); Pub. L. No. 101-515, 104 Stat. 2101 (1990); Pub. L. No. 102-140, 105 Stat. 782 (1991); Pub. L. No. 102-395, 106 Stat. 1828 (1992); Pub. L. No. 103-121, 107 Stat. 1153 (1993); Pub. L. No. 103-317, 108 Stat. 1724 (1994).

⁴TV 9, Inc. v. FCC, 495 F.2d 929, 938 (D.C. Cir. 1973), cert. denied, 418 U.S. 986 (1974) (rejecting the view that mutually exclusive applicants for broadcast construction permits should not receive comparative credit for minority ownership).

⁵Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 549, 580 (1990).

⁶Until recently, credit for minority ownership was awarded as a qualitative enhancement of the credit given for an applicant's proposal to "integrate" the ownership and management of a new station (*i.e.*, to have its owners work on a day-to-day basis managing the station). The Commission instituted this minority preference policy pursuant to TV 9, supra, which reversed a Commission decision refusing to award a broadcast applicant merit for minority ownership and participation. The minority preference policy was deemed constitutional by the Supreme Court in Metro Broadcasting, supra, which also upheld the Commission's distress sale policy. However, because the Commission's integration policy was invalidated last year in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993), credit for minority ownership can no longer be linked to integration. The issue of how minority preferences may be awarded in comparative hearings in conformity with Bechtel is being addressed in a separate proceeding. See Reexamination of the Policy Statement on Comparative Broadcast Hearings, Second Further Notice of Proposed Rule Making in GC Docket No. 92-52, 9 FCC Rcd 2821 (1994).

minorities.⁷ As discussed below, the tax certificate policy enables the seller of a broadcast station or cable television system to defer the gain realized on that sale if the property is sold to a minority purchaser. This has been frequently utilized – as of October 1994, the Commission had issued minority tax certificates in connection with 281 sales of AM, FM and TV stations, and in connection with 25 sales of cable systems since the inception of the tax certificate policy.⁸ The distress sale policy permits a broadcast licensee whose license has been designated for a revocation hearing to sell its station, after designation for hearing but prior to commencement of the hearing, to a minority-controlled entity at 75 percent or less of the station's fair market value. To date, the distress sale policy has been invoked only rarely; Commission records indicate that 42 distress sales have been approved since the Commission adopted the distress sale policy.

4. Further, in 1985, the Commission adopted minority ownership incentives as part of its national multiple ownership rules, permitting a group owner, *i.e.*, an owner of more than one facility, to acquire attributable interests in additional stations if those stations are minority-controlled.⁹ Specifically, the television ownership rules generally limit a single owner to 12 TV stations with an aggregate national audience reach no more than 25 percent. A non-minority owner may take a non-controlling interest in an additional two TV stations that are minority-controlled if the aggregate audience reach of all its stations does not exceed 30 percent.¹⁰ A minority owner may also acquire an additional two TV stations with an aggregate audience reach of up to 30 percent, but

⁷Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C.2d 979 (1978) (1978 Policy Statement) (establishes tax certificate and distress sale policies); Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 F.C.C.2d 849 (1982) (1982 Policy Statement), proceeding terminated, 99 F.C.C.2d 1249 (1985) (clarifies tax certificate policy and extends policy to cable television systems).

⁸Report of the Public Service Division, Office of Associate Managing Director for Public Information and Reference Services, Oct. 5, 1994.

⁹Memorandum Opinion and Order in Gen. Docket No. 83-1009, 100 F.C.C.2d 74 (1985). The Commission has adopted analogous provisions with respect to cable television. Section 76.503 of the Commission's rules, 47 C.F.R. § 76.503, provides that a person or entity may reach no more than 30 percent of all homes passed nationwide through cable television. The rule includes an exception whereby an individual or entity may reach an additional five percent of the nation through cable systems that are minority-controlled. See Second Report and Order in MM Docket No. 92-264, 8 FCC Rcd 8565, 8578 (1993), petitions for reconsideration pending.

¹⁰The additional five percent must come from the two minority-controlled stations. 47 C.F.R. § 73.3555(e)(2).

may have a controlling interest in those stations, making for a TV minority ownership limit of 14 stations total. The national radio ownership rules, as recently modified, permit a minority owner to own and control 25 AM and 25 FM stations. They permit a non-minority owner to own and control 20 AM and 20 FM stations and hold a non-controlling interest in an additional five AM and five FM stations that are controlled by minorities or small businesses.¹¹

5. While these policies have facilitated the acquisition of broadcast and cable properties by minorities, the overall representation of minorities among broadcast station or cable owners remains far below their presence in the national population and the civilian labor force. When the Commission adopted its minority tax certificate and distress sale policies in 1978, minorities comprised approximately 20 percent of the national population but controlled fewer than one percent of the 8,500 commercial radio and television stations.¹² The most recent data available show that, as of June 30, 1994, minorities represented almost 23 percent of the national workforce but control only 2.9 percent (323) of the 11,128 commercial radio and television stations on the air.¹³ Similarly, of the approximately 7,500 cable operators, 0.2 percent (15) are minority-controlled.¹⁴ Thus, despite the Commission's efforts to increase minority ownership of broadcast and cable facilities, minorities today remain significantly underrepresented among mass media owners.

6. Women have likewise traditionally been underrepresented among mass media owners. As of 1988, only 7.1 percent of broadcast stations were owned and controlled by women¹⁵ although women represent almost 46 percent of the civilian labor force in the United States.¹⁶ We believe that the public interest is served by increasing economic opportunities for minorities and women to own communications facilities. As we have

¹¹Second Reconsideration Order in MM Docket No. 91-140, FCC 94-267 (released November 8, 1994).

¹²See 1978 Policy Statement, *supra*, at 981.

¹³See Analysis and Compilation of Minority-Owned Commercial Broadcast Stations in the United States, The Minority Telecommunications Development Program, National Telecommunications and Information Administration, September 1994.

¹⁴See Testimony of Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, before the House Minority Enterprise Subcommittee, May 20, 1994.

¹⁵"Minority Broadcast Station Ownership and Programming: Is There a Nexus?," Congressional Research Service, July 29, 1988, at 12.

¹⁶See Report in MM Docket No. 94-34, 9 FCC Rcd 6276 (1994) (EEO Report).

noted in other contexts, promoting competition is an important Commission goal.¹⁷ This concept was espoused by Congress in 1993 when it adopted Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), authorizing the Commission to adopt competitive bidding procedures for Commission licenses for spectrum-based services. Congress specifically recognized that it is consistent with the public interest to adopt competitive bidding procedures that promote economic opportunity for a wide variety of applicants, including minorities and women.¹⁸ Congress also directed the Commission to ensure that minorities and women are given the opportunity to participate in the provision of spectrum-based services by issuing tax certificates, adopting bidding preferences, and adopting other procedures.¹⁹

7. We request that commenters provide current data regarding female ownership of mass media facilities. We invite commenters to discuss whether, if we ultimately establish that women are underrepresented, each of the initiatives proposed below to promote minority ownership should also be applied to women.²⁰ The Commission presently has no policies designed to promote women's ownership of mass media facilities. The Commission in the past awarded female owners a preference in comparative broadcast hearings, but that policy was invalidated by the U.S. Court of Appeals for the District of Columbia in Lamprecht v. FCC based on its finding that the Commission had failed to show a nexus between women's ownership of broadcast stations and diversity of programming.²¹ In requesting comment on whether our proposed initiatives should be applied to women, we are mindful of the court's decision

¹⁷See, e.g., Notice of Proposed Rule Making and Tentative Decision in Gen Docket No. 90-314, 7 FCC Rcd 5676, 5688 (1992) (Amendment of the Commission's Rules to Establish New Personal Communications Services); Second Report and Order in Gen. Docket No. 90-314, 8 FCC Rcd 7700, 7709 (1993); Second Report and Order in Gen. Docket No. 93-252, 9 FCC Rcd 1411, 1419 (1994) (Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Commercial Mobile Radio Services); Memorandum Opinion and Order, Craig O. McCaw and American Telephone and Telegraph Co., Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, File Nos. ENF-93-44, 05288-CL-TC-1-93, et al., 9 FCC Rcd 5836, 5844, 5861-64, 5872-73 (1994).

¹⁸47 U.S.C. § 309(j)(4)(C)(ii).

¹⁹47 U.S.C. § 309(j)(4)(D).

²⁰We have incorporated women into the proposals presented below. This is not intended to imply that the Commission has prejudged the issue of whether women are underrepresented as owners of mass media properties. We will rely on data provided by commenters to determine whether women are indeed underrepresented.

²¹See Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992).

in Lamprecht. Accordingly, we ask commenters to specifically address the extent to which female ownership contributes to diversity of programming distributed by the mass media and to provide evidence as appropriate.

8. As an alternative legal justification for providing incentives for greater ownership of mass media facilities by both minorities and women, apart from diversity of programming, we solicit comment on whether we should instead rely on an economic rationale. Specifically, we believe that women and minorities face economic disadvantages when they attempt to enter the mass media industry and that it may be appropriate to attempt to rectify such disadvantages, just as we have developed our EEO policies to encourage the hiring and promotion of women and minorities. Accordingly, we seek comment on whether prospective and existing minority or female owners encounter greater costs of capital due to higher than market rate loans, restrictive loan covenants or other restrictions, and data to support these comments. We seek information about whether, in some cases, minorities and women may lack access to capital when attempting to finance the purchase of a mass media outlet when others similarly situated would have such access, and if so, an analysis of the reasons for this condition. We seek comment on other types of disadvantages minorities and women face in acquiring mass media facilities, and data and analysis to explain why these disadvantages may be more prohibitive for minorities and women than for traditional participants in these markets. In addition, we request comment on whether other Commission policies, such as our tax certificate policy, mitigate these difficulties.

9. This Notice proposes specific mechanisms intended to increase minority and female ownership of mass media facilities, and solicits suggestions for other ways to further this goal. Our aim in proposing the mechanisms detailed here is to increase minority and female operators' access to capital, which has consistently been identified as a crucial barrier to entry. First, we discuss ways to refine the Commission's previous proposal to create an "incubator" program whereby existing mass media entities would be encouraged, through ownership-based incentives, to assist new entrants to the communications industry. Next, we seek comment on whether and how to modify our ownership attribution rules to increase investment in minority and female-controlled properties and further to benefit minority and female owners. We then explore ways to expand our existing tax certificate policy to encourage entities to sell their mass media holdings to minorities and women, and to make it easier for minority and female operators to upgrade their facilities. We also discuss other ideas, apart from capital enhancing proposals, that might also contribute to greater minority and female ownership of mass media facilities. Finally, we ask commenters to provide relevant data and we seek comment on whether to revise our broadcast ownership form to collect information on race, ethnicity and gender.

10. The suggestions presented here are not intended to be exhaustive; we encourage commenters to propose other ways to advance minority and female ownership

of mass media outlets.²² Moreover, we request that commenters submit recent data regarding minority and female ownership levels in broadcasting and cable as well as other media of mass communication, such as low power television and MMDS. While we include both minorities and women in the proposals outlined below, we emphasize that the legal basis for each initiative will be analyzed separately for legal sufficiency with regard to minorities and women. Commenters who believe that any or all of the proposals detailed below should not apply to both women and minorities should identify those proposals and provide reasons why the two groups should be treated differently.

II. PROPOSED INITIATIVES TO INCREASE ACCESS TO CAPITAL

11. In the years since the Commission and Congress began studying the issue of minority ownership, considerable evidence has been presented showing that the primary impediment to minorities seeking to enter the communications industry or to increase their mass media holdings is lack of access to capital. As we noted in the personal communications services (PCS) context, Congress explicitly recognized in the Small Business Credit and Business Opportunity Enhancement Act of 1992 that minorities have "extraordinary" difficulties in obtaining capital.²³ Evidence presented earlier this year in testimony before the House Minority Enterprise Subcommittee similarly indicates that black business borrowers have difficulty raising capital primarily because they have less equity to invest, receive fewer loan dollars per dollar of equity investment, and are less likely to have alternate loan sources such as family and friends who are in a position to lend them money.²⁴ Also illustrative of the problems minorities face in securing capital

²²We recognize that it is often the case in the mass media industry that station or system owners were once employees of that facility or of another facility. Thus, increasing minority employment in the mass media may ultimately contribute to increased minority ownership. In our recent EEO Report, *supra* note 16, we directed the staff to determine and recommend to us the appropriate procedural vehicle for addressing comments we had received regarding modifications to our equal employment opportunity (EEO) rules. We request that parties defer EEO matters to that proceeding rather than raise them here.

²³ Fifth Report and Order in PP Docket No. 93-253, FCC 94-178 (released July 15, 1994) (PCS Competitive Bidding Fifth Report and Order) at para. 98 (quoting Small Business Credit and Business Opportunity Enhancement Act of 1992, 15 U.S.C. § 631 note, Pub. L. No. 102-366, 106 Stat. 986 §§ 112(4), 331(a)(4)).

²⁴ Testimony of Dr. Timothy Bates, Visiting Fellow, the Woodrow Wilson Center, before the U.S. House of Representatives Committee on Small Business, Subcommittee on Minority Enterprise, Finance and Urban Development (House Minority Enterprise Subcommittee), May 20, 1994.

is a 1992 study by the Federal Reserve Bank of Boston, which reveals widespread discrimination against minority loan applicants. That study, which involved extensive discussion with lenders, underwriters and examiners, found that minority applicants are more likely to be denied mortgages even in situations where they have the same obligation ratios, credit history, loan to value and property characteristics as non-minority applicants. Specifically, the study found that a black or Hispanic applicant in the Boston area is approximately 60 percent more likely to be denied a mortgage loan than is a similarly-situated non-minority applicant.²⁵

12. Moreover, in adopting previous initiatives to increase minority ownership, such as the minority tax certificate and distress sale policies, the Commission has cited lack of access to capital as a significant impediment to minorities seeking to enter the mass media industry.²⁶ In 1981, for example, the Commission created the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications, which reported that financing was the "single greatest obstacle" to the entry of minorities into the telecommunications industry.²⁷ Commenters in the Commission's recent radio ownership proceeding also pointed out that minorities seeking to become station owners are disadvantaged above all by inadequate financing.²⁸

13. It appears that the underrepresentation of women in mass media ownership is also due in important part to the difficulties women face in obtaining capital. These difficulties were recently illustrated in a study conducted by the National Foundation for Women Business Owners, which found that the removal of financial barriers would stimulate the growth of women-owned businesses.²⁹ For instance, the study found that

²⁵ Mortgage Lending in Boston; Interpreting HMDA Data, Federal Reserve Bank of Boston, Working Paper 92-7 (October 1992).

²⁶ See, e.g., 1978 Policy Statement. The problem is also detailed in a report issued by an advisory committee created by the Commission in 1981 to investigate financing methods and to give recommendations to the Commission on ways to encourage minority ownership of telecommunications facilities. See Strategies for Advancing Minority Ownership Opportunities in Telecommunications, The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the Federal Communications Commission, May 1982.

²⁷ 1982 Policy Statement, 92 F.C.C.2d at 853.

²⁸ See, e.g., Comments of Capital Cities/ABC, Inc., on Notice of Proposed Rule Making in MM Docket No. 91-140 at 23-24.

²⁹ The National Foundation for Women Business Owners, Financing the Business, A Report on Financial Issues from the 1992 Biennial Membership Survey of Women Business Owners, October 1992. See also FCC, Competitive Bidding Fifth Report and

women-owned firms are 22 percent more likely to report problems dealing with their banks than are businesses at large. The study also concluded that credit cards are the type of short-term financing most used by female business owners; more than half of women-owned firms use credit cards for such purposes as compared with 18 percent of all small to medium-sized businesses, which generally use bank loans and vendor credit for short-term credit needs. With regard to long-term financing, the study found that a greater proportion of women-owned firms turn to private sources and to a wider variety of sources than do businesses in general. In addition, a dramatic illustration of women's lack of access to capital has been provided by American Women in Radio and Television (AWRT), which reports that women-owned companies received only about one percent of the \$3 billion invested by institutional venture capitalists in 1993.³⁰

14. Accordingly, we request comment on how the Commission's rules and policies might be modified to increase minority and female owners' access to capital. We suggest three specific initiatives – (1) development of incubator programs; (2) modifications to the rules governing attribution of ownership interests; and (3) expansion of the Commission's minority tax certificate policy. These initiatives are designed not only to increase access to capital provided by institutional lenders, but also to encourage financial assistance to minorities and women from established participants within the broadcasting and cable industries by creating new investment incentives.

A. Incubator Programs

15. Existing mass media operators can play an important role in helping minorities and women raise capital. Some operators, particularly large broadcast station groups or cable multiple system operators (MSOs) might be in a position to provide prospective minority and female broadcasters and cable operators with low-interest loans. Such group owners might also offer newcomers the industry expertise they need to obtain credit by, for example, providing management training and operational assistance.

16. In connection with its proceeding relaxing the radio multiple ownership rules, the Commission sought comment on how "incubator" programs could assist new entrants to the broadcasting industry.³¹ As previously proposed, an "incubator" program referred to an arrangement whereby existing broadcasters share their talent, experience and financial resources with minorities and small businesses seeking to enter the mass media industry in exchange for regulatory concessions such as relief from certain multiple ownership restrictions. For example, a group owner that has already reached

Order at para. 102.

³⁰See Letter of AWRT to the Honorable Kweisi Mfume, Chairman, House Minority Enterprise Subcommittee, June 1, 1994.

³¹Incubator Further Notice, *supra*, note 2.

the national radio ownership limit might be permitted to own one additional station for every one minority-controlled station it "incubates." The Commission suggested that a qualified program could involve providing financial, technical and other assistance, or could involve group owners entering into joint ventures with Small Business Investment Companies (SBICs) or Specialized Small Business Investment Companies (SSBICs) that provide assistance to new entrant radio stations.³² The Commission did not suggest a particular structure for an acceptable incubator program, but proposed that such a program would have to involve more than "simply writing a check to an SBIC or [SSBIC], or holding a single symposium."³³

17. Commenters on the incubator proposal offered few specific suggestions.³⁴ They generally supported the incubator concept but suggested that we narrow our proposal to focus on minority broadcasters rather than both minorities and small businesses, arguing that including small businesses could dilute the advantages available to minorities. In addition, AWRT specifically requested that we extend the incubator program to women. We note that the Commission recently adopted PCS rules that, as required by Congress, include small businesses as well as minorities and women as "designated entities."³⁵ While such an approach may be appropriate for newly licensed services, we believe that it is not justified for the existing mass media services considered here. A principal goal of this proceeding is to rectify the significant underrepresentation of minorities and women in mass media ownership so as to increase programming

³²SSBICs were formerly known as MESBICs, or Minority Enterprise Small Business Investment Companies. The Small Business Association licenses SBICs and SSBICs to act as vehicles through which it provides advisory services and venture capital in the form of equity financing and long-term loan funds to small business and minority-owned concerns. An SSBIC is a type of SBIC that makes investments solely in minority-controlled businesses.

³³Incubator Further Notice at 6392.

³⁴Parties filing comments on the Incubator Further Notice included American Women in Radio and Television (AWRT), Broadcast Capital Fund, Inc., Mid-West Family Stations, National Association of Black-Owned Broadcasters/National Black Media Coalition/National Bar Association (jointly), National Association of Broadcasters, and Paxson Enterprises, Inc.

³⁵See PCS Competitive Bidding Fifth Report and Order, *supra*, note 18. For PCS purposes, "designated entities" include minorities, women, small businesses and rural telephone companies.

diversity.³⁶ We tentatively conclude that our incubator initiative will produce the maximum benefits for minority and female operators, and thus increase diversity of viewpoint on broadcast and cable facilities, if it is limited to such underrepresented entities. As noted above, we believe the proposals made herein will increase economic opportunity for minorities and women, another important Commission goal. We seek comment on this tentative conclusion. We also seek comment on whether all minorities and women should be eligible, or whether we should adopt a net worth threshold to ensure that the benefits of an incubator program are available only to those minority and female operators who have the greatest need for capital.

18. We propose to apply the incubator approach not only to traditional television and radio broadcasting, but also to low power television, cable television, and multichannel multipoint distribution service (MMDS, or "wireless cable"). We seek comment on doing so, and on any differences we should consider with regard to these services. We also invite comment as to what steps we can take to make an incubator program effective as a means to increase minority and female ownership by assisting a minority or female individual or entity in purchasing a mass media outlet. We do not intend to deem acceptable an incubator program that does not increase minority or female ownership. For example, an incubator program designed to enable a minority FM licensee to upgrade its facility would not qualify, but a program designed to enable that licensee to purchase another station would qualify.

19. We note that to date the existing minority and small business ownership incentive in the broadcast multiple ownership rules has not been particularly effective, arguably because it does not offer the investor control of another station.³⁷ An incubator program, on the other hand, would enable a broadcast licensee or other entity to own and control an additional facility in return for incubating an unrelated facility (or a number of unrelated facilities). We request comment on the structure we should establish to encourage group owners to undertake the substantial effort necessary to establish a successful incubator program. In this regard, we note that NABOB, NBMC and the National Bar Association, in joint comments on our previous incubator proposal,

³⁶In contrast, the primary aim of the Commission's radio ownership proceeding, MM Docket No. 91-140, was to invigorate the radio industry in general by permitting greater consolidation of ownership. Accordingly, the Commission in that Docket did incorporate an incentive encouraging investment in stations owned by small businesses as well as minority broadcasters.

³⁷The TV incentive permits a group owner to take a non-controlling but attributable interest in an additional two TV stations if those stations are minority-controlled. The radio incentive permits a group owner to take a non-controlling but attributable interest in an additional five AM and five FM stations if those stations are controlled by minorities and small businesses. 47 C.F.R. § 73.3555(e).

question the efficacy of an incubator program altogether, arguing that an incubator program cannot offset the effects on minority ownership of recent increases in the radio ownership limits. They propose that if the Commission chooses to adopt rules establishing an incubator initiative, it should be structured as follows:

- (1) limit the program to minorities as opposed to minorities and small businesses;
- (2) require that an incubating operator provide all of the elements listed in the Further Notice (i.e., loan guarantees, direct financial assistance through loans or equity investment, management or technical assistance, training and business planning assistance);
- (3) require that a successful incubator program be in place for at least a year before an incubating operator may acquire additional stations;
- (4) require that an operator incubate two minority-owned facilities for every additional facility it is permitted to acquire over the ownership limits; and
- (5) require that the incubating operator demonstrate that any proposed acquisition will not adversely impact minority ownership.³⁸

We have incorporated requirements (1) through (4) proposed by NABOB/NBMC/NBA into our proposal, as detailed below. NABOB/NBMC/NBA does not explain how the fifth requirement would be implemented or how it would specifically contribute to the goal of increasing minority ownership. We do not propose to adopt such a limitation; to the extent commenters find NABOB/NBMC/NBA's suggestion meritorious, they should discuss how we could define an incubator program to avoid disruption of existing minority and female ownership.

20. With respect to the substance of an acceptable incubator program, we propose to require a meaningful commitment to advancing minority and/or female ownership. We therefore propose that an acceptable incubator program must include, at a minimum, three elements: (1) substantial financial assistance (e.g., direct equity participation, loan guarantees or long-term low interest loans at, for example, one-half the market rate); (2) operational assistance (such as technical advice or assistance with station operations and management); and (3) training programs for new broadcasters and/or station personnel. Our intention is to establish a structure that is rigid enough to effectively assist minority and female owners and to guard against abuse, but flexible enough to let participants tailor their programs to accommodate their particular needs. Are there any other types of assistance that should be required? For example, an incubator program might also involve donation of equipment, studio space or advertising

³⁸NABOB/NBMC/NBA Comments at 5-6.

time. We seek comment on how these or other elements could be incorporated. Should any of the proposed required elements be optional? What minimum amount of financial assistance should be required in connection with an acceptable incubator program? Should we establish a specific dollar amount or require contribution of a certain percentage of the total resources needed by the incubated operator? What incentives should be provided to prospective incubating owners to maximize the effectiveness of this program?

21. In the Incubator Further Notice, we proposed that as an alternative to the factors mentioned above, a joint venture with an SBA-licensed SSBIC could be considered an incubator program. Is the SSBIC program an adequate substitute for the incubator requirements we propose? In addition to seeking comment on the proposed incubator program outlined above, we invite commenters to submit their own model incubator plans. Are there incentives other than the ownership-based plan discussed here that would encourage existing operators to establish incubator programs?

22. If the Commission determines that increased ownership is an adequate incentive for an incubating owner, at what point should the incubating owner be permitted to acquire additional facilities? For example, should the Commission adopt a one-year waiting period similar to that proposed by NABOB/NBMC/NBA, *i.e.*, an incubator program must have been in place for one year before the incubating entity may purchase additional facilities? Would a shorter period of time be preferable, such as six months? While a waiting period requirement may effectively forestall abuse, it could also discourage an existing owner from initiating an incubator program; a one-year or six-month wait can be significant in such a volatile industry. In the alternative, given that the purpose of an incubator program is to enable the incubated entity to purchase a facility, we could permit the incubating entity to acquire an additional facility as soon as the incubated facility is purchased and operational, subject to a one-year holding requirement on the part of the incubated owner. We seek comment on these proposals.

23. In addition, how many mass media properties should a group owner participating in such a program be permitted to acquire above the applicable ownership limit? Should a TV licensee, for example, be allowed to acquire one additional TV station for every two TV stations it incubates, as NABOB/NBMC/NBA propose? Would some other ratio be more effective, for instance one station or system for each incubated facility? Should we limit the total number of additional facilities an owner may acquire pursuant to an incubator program? Further, we believe that the assistance provided to an incubated facility will be meaningful only if the additional facilities acquired by the incubating owner are of comparable value to the incubated station. We would not permit, for example, an owner incubating an FM radio station (or stations) to acquire an additional VHF TV station. We also propose to require that the additional facilities not be significantly more valuable than the incubated facility; *e.g.*, an entity could not incubate a facility in a very small market and in return acquire a station in New York City or Los Angeles. Specifically, we propose that the facility acquired by the incubating

entity must be within five markets above the incubated facility's market rank, or must be in a market ranked below the incubated facility's market. We seek comment on these proposals. What market definition should apply, e.g., the Arbitron ADI markets for television? A parallel formulation would also be needed in the cable television context so that the additional facilities or "households" passed in excess of what is ordinarily permitted by the rules³⁹ has comparable size or value in relationship to the incubated facility. We ask commenters to submit suggestions in this regard.

24. Further, should broadcasters participating in the incubator program be allowed to exceed both the national and local multiple ownership limits? Unlike the national ownership limits for radio and television, the local ownership rules do not currently include a separate ownership cap for minorities. As we have discussed in other contexts, the threat of undue concentration may arise at the local level, particularly in small, less diverse markets.⁴⁰ Commenters who support extending the incubator program to permit incubating owners to acquire an additional station locally should discuss whether the Commission should be less permissive in considering waivers to the radio and TV duopoly rules or the one-to-a-market rule than to the national ownership rules. In the same vein, should facilities in small, concentrated markets be treated differently than in large, diverse markets? If so, what should be the threshold (e.g., may acquire an additional facility in the top 25 television markets with at least 30 other voices)?⁴¹

B. Attribution Rules

25. The Commission's broadcast attribution rules, set forth in the notes to 47 C.F.R. § 73.3555, are used to determine whether particular media holdings will be considered ownership interests for purposes of applying the Commission's multiple ownership rules.⁴² Parallel provisions appear in the cable television rules, 47 C.F.R. § 76.501. In general, any interest that represents five percent or more of the outstanding voting stock of a company is an attributable ownership interest and thus is counted in

³⁹See note 9, supra.

⁴⁰See, e.g., Second Memorandum Opinion and Order in MM Docket No. 91-140, FCC 94-267 (released Nov. 8, 1994).

⁴¹In a Further Notice of Proposed Rulemaking, adopted concurrently with this Notice, the Commission seeks further comment on modification of the TV duopoly rule (47 C.F.R. § 73.3555(b)) and the one-to-a-market rule (47 C.F.R. § 73.3555(c)). See Further Notice of Proposed Rule Making in MM Docket No. 91-221, FCC 94-322 (adopted Dec. 15, 1994) (TV Further Notice).

⁴²Concurrently with this proceeding, we are initiating a proceeding to review the Commission's rules regarding attribution of ownership in general. See Attribution Notice, supra note 2.

determining compliance with the multiple ownership limits. Passive investors may hold up to 10 percent of a company's voting stock without attribution.⁴³ Non-voting stock interests, including most preferred classes of stock, generally are not considered attributable. In addition, limited partnership interests are not deemed attributable if the licensee certifies that the limited partner is not materially involved in the management or operation of the media-related activities of the partnership.⁴⁴

26. We now seek comment on whether, and in what manner, we should modify our mass media attribution rules to help minority and female-owned businesses raise capital. If commenters believe that relaxing our attribution rules would in fact stimulate investment in minority-owned mass media facilities, we ask that they make specific suggestions as to how the rules might be restructured and how the proposed changes would facilitate capital availability. We believe, for example, that one of the options made available to "designated entities" bidding for PCS licenses⁴⁵ could be adapted as follows: If a minority or female individual or entity or group of individuals or entities holds more than 50 percent of the voting stock of a corporate broadcast licensee or other mass media entity, with at least 15 percent of the company's equity, then no other

⁴³Three types of entities are considered passive investors: (1) investment companies; (2) insurance companies; and (3) bank trust departments. See 47 C.F.R. § 73.3555, Note 2(c).

⁴⁴Adequate insulation from the media-related activities of the partnership is determined with reference to the specific insulation criteria delineated in Attribution Reconsideration Order, 58 RR 2d 604 (1985).

⁴⁵The PCS rules have special attribution provisions regarding bidding preferences for "designated entities," including, inter alia, minority and female-owned businesses. Pursuant to those rules, if a designated entity control group owns at least 50.1 percent of the voting stock of an applicant, and at least 50.1 percent of the equity, other investors' interests are not deemed attributable unless such investors own more than 49.9 percent of the entity's passive equity. In the alternative, if a designated entity control group owns at least 50.1 percent of the voting stock and at least 25 percent of the equity, other interests are not attributable unless such investors own more than 25 percent of the passive equity. Passive equity is defined to include limited partnership interests, non-voting stock, and, in the case of corporations, 25 percent or less of the voting stock. A designated entity control group must be controlled by a qualifying designated entity but may include other interests as well. Thus, while the designated entity must hold at least 25 percent equity, only 15 percent of that equity must come from the qualifying designated entity participants, and up to 10 percent may come from other sources. See Fifth Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-285 (released November 23, 1994).

interests in that entity will be attributable.⁴⁶ We seek comment on whether we should relax our attribution rules in this manner, and also solicit alternative suggestions. Should the rule apply locally as well as nationally? In other words, would the capital-enhancing benefits of such a rule be significant enough to outweigh concerns about potential concentration of ownership in local markets? Should any such attribution rule change be limited to large markets with a specified number of outlets and independent voices? Alternatively, should this attribution rule only be operative at the national level, so that an owner would not be permitted to hold 49 percent of two minority or female-controlled entities in the same local area? The above rule, as proposed, would permit an investor to hold 49.9 percent of the voting stock in an unlimited number of minority or female-controlled entities. Should there be a numerical limit on the number of interests in minority or female-controlled stations that would, under this exception, be considered not attributable to the investor?

27. This proposed rule would require that the minority or female owner or owners actually control the licensee. How should control be determined? A licensee might, for example, have a "control group" of six minority owners who each hold 10 percent of the voting stock. Because they would collectively hold more than 50 percent of the voting stock, under the suggested rule no other interests would be attributable. It would violate the intent of the suggested rule, however, if a non-minority shareholder who held 30 or 40 percent of the licensee had the ability to exercise control. Thus, we propose to require, as a safeguard against misuse, that each licensee wishing to qualify for the benefits of the rule certify on its application for transfer, assignment or renewal that investors taking advantage of this exception (*i.e.*, non-minority or male investors holding shares above the applicable attribution benchmark who seek to have their interests deemed non-attributable) do not exercise control over the day-to-day operations of the broadcast station. We seek comment on whether such a certification, in combination with the 15 percent equity benchmark, would operate as sufficient safeguards. Are there alternative ways to ensure that the minority or female "control group" is actually in control?

C. Tax Certificates

28. Exercising the authority conferred upon it by Section 1071 of the Internal Revenue Code, 26 U.S.C. § 1071, the Commission has, since 1978, issued tax certificates to promote minority ownership of broadcast stations.⁴⁷ Under the current

⁴⁶Subject to the outcome of the attribution proceeding being initiated today, we would not intend by adopting a 15 percent equity requirement to alter our single majority shareholder rule. See 47 C.F.R. § 73.3555, Note 2(b).

⁴⁷Under Section 1071, the Commission may issue a tax certificate that permits sellers of broadcast properties to defer capital gains taxation on a sale or exchange of property

policy, such tax certificates are awarded to encourage both the sale of facilities to minority purchasers and the investment of start-up capital in minority entities. Thus, tax certificates are available to (1) individuals and entities that sell a broadcast station or cable system to a minority-controlled purchaser and (2) equity holders in a minority-controlled broadcasting or cable entity upon the sale of their equity, provided that their interest assisted in financing the acquisition of a broadcast or cable property or was purchased within the first year after broadcast license issuance, thus contributing to the stabilization of the entity's capital base. In either case, the tax certificate enables the seller to defer for two years the gain realized by (1) treating it as an involuntary conversion, under 26 U.S.C. § 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, under 26 U.S.C. § 1071, or both.⁴⁸

29. The tax certificate policy has been the most frequently used of the Commission's minority ownership policies. Over the past several years, a number of parties have suggested that the policy could be of even greater benefit to minority owners if the Commission and the Internal Revenue Service set up a working group to change certain IRS rules regarding tax certificates.⁴⁹ They proposed, for example, that we ask the IRS to revisit its 1966 ruling that requires a holder of a tax certificate to reinvest the proceeds of a sale in a corporation that directly operates a communications business, as opposed to a holding company. They also proposed that we ask the IRS to revisit revenue rulings holding that the purchase of interests in a partnership does not qualify as replacement property. In addition, they urge us to ask the IRS to increase the deferral period from two years to at least four years. Another suggestion that has come up in informal discussions with minority mass media operators is that we seek to expand the definition of suitable reinvestment property for a mass media seller to include any communications business. The suggested rule change would, for instance, permit a

whenever it determines that such a sale or exchange is "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations. . . ." 26 U.S.C. § 1071.

⁴⁸ See 1978 Policy Statement, 68 F.C.C.2d 979; 1982 Policy Statement, 92 F.C.C.2d 849.

⁴⁹ See Petition for Rule Making of the National Association for the Advancement of Colored People, the League of United Latin American Citizens, the National Hispanic Media Coalition and the National Black Media Coalition, filed Sept. 18, 1990. A similar petition was filed by the Coalition to Improve Tax Certificate Policies on December 8, 1994. (An earlier petition filed by the Coalition to Improve Tax Certificate Policies was withdrawn by letter dated December 8, 1994.) We incorporate the NAACP/LULAC/NHMC/NBMC Petition and the Coalition to Improve Tax Certificate Policies Petition by reference into this proceeding.

cable operator to sell his or her system to a minority and reinvest the proceeds in a PCS entity or telephone company. We seek comment on these proposals and invite commenters to suggest other ways the tax certificate policy could be used to further the goals set out herein.

30. Further, we seek comment on whether extension of our tax certificate policies could spur additional investment in communications outlets. For example, it has been suggested that the Commission might extend the tax certificate policy by issuing certificates to investors that provide start-up capital for minority-controlled cable programmers, particularly educational programmers, who later sell their shares.⁵⁰ Similarly, should the Commission grant tax certificates to minority MMDS operators or minority video programmers?⁵¹

31. We also ask whether we should issue a tax certificate to a minority operator that sells its facility to a non-minority buyer if the minority seller uses the proceeds to invest in a controlling interest in a more valuable mass media property.⁵² We have declined to adopt this approach in the past because we were concerned that such a transaction would result in a net decrease in minority ownership during the two-year deferral period.⁵³ On the other hand, this extension of the tax certificate policy might ultimately enable minority-owned stations to become more competitive. We ask commenters to address these competing considerations. A possible compromise approach would be to issue a tax certificate for minority owners seeking to acquire a more valuable property if the minority seller can provide evidence that it is prepared to purchase the more valuable facility within a reasonable period of time. Commenters espousing this approach should address what would constitute "a reasonable period of time." Further, what guidelines should govern valuation of the properties involved? We also seek comment on whether extension of our tax certificate policies to the entities

⁵⁰See Petition for Declaratory Ruling Regarding Extension of the Commission's Minority Tax Certificate Policies to Minority-Controlled Video Programmers, Nathan W. Garner and Scholastic, Inc. (filed November 18, 1994), which will be included in the record of this proceeding. By raising this issue here, we do not intend to foreclose the possibility that the Commission might interpret existing policy as broad enough to cover some of the matters discussed herein.

⁵¹See Petition for Declaratory Ruling Regarding Issuance of Tax Certificates, Transworld Telecommunications, Inc. and Transworld Wireless T.V. Tampa Bay, Inc. (filed January 29, 1993), which will be included in the record of this proceeding.

⁵²Of course, if the minority broadcaster or cable system owner sells its station or system to another minority broadcaster, it would be eligible for a tax certificate under the current policy.

⁵³See Letter to R. Clark Wadlow, Esq., 4 FCC Rcd 5262 (1989).

described in this paragraph and the previous paragraph are permissible under Section 1071 of the Internal Revenue Code.

32. Commenters are also requested to discuss how the tax certificate policy could be modified to increase female ownership of mass media facilities. Should we treat minority and female operators alike, or are there aspects of the tax certificate policy that would not apply equally to both groups?

III. OTHER INITIATIVES TO FACILITATE MINORITY AND FEMALE OWNERSHIP OF MASS MEDIA FACILITIES

33. *Investment Tax Credit.* It has been informally suggested that we propose legislation permitting a current year credit for investors in minority-controlled communications corporations. As noted previously, a tax certificate is available for start-up investors in minority-controlled mass media companies when they sell their interests. A current-year credit would afford such start-up investors a tax benefit without requiring that they sell their interests. It would also provide a more immediate investment incentive in that the tax benefit would be available to the investor for the tax year that the investment is made. Thus, an investment tax credit might be another way to help minority and female owners raise capital. Should we consider proposing legislative action in this regard? If so, what is the minimum investment that should qualify; would 20 percent be an appropriate threshold? How should the credit operate, e.g., should an investor receive a credit for 100 percent of the amount he or she invests?

34. *Application standards.* In its comments in MM Docket No. 92-51, the Minority Broadcast Investment Corporation (MBIC) urged the Commission to take steps to streamline the broadcast application process for applicants funded by SSBICs.⁵⁴ MBIC proposed that certain application processing standards not be applied to applicants receiving their financing from SSBICs, specifically: (1) the practice of permitting competitors of minority applicants in comparative hearings to allege that the minority applicant is actually a front for non-minority investors; and (2) the practice of permitting competitors to claim that the language of a financial letter does not really offer the financing stated but is merely an accommodation to the applicant. We seek comment on whether we should establish a rebuttable presumption for a broadcast applicant financed by an SBA-licensed SSBIC that (1) it is not acting as a front for non-minority investors and (2) the representations in its financial letter regarding financing provided by an SSBIC are accurate. We believe that this presumption could make the application process less expensive and less time-consuming for eligible applicants. Would the current rules regarding SSBIC licensing provide adequate safeguards to deter misuse of such a

⁵⁴Other issues raised in MM Docket No. 92-51 are addressed in our Attribution Notice, supra, note 2, which was adopted concurrently with this Notice.

presumption?

35. *Ownership limits.* Minority and female owners may also benefit from allowing higher local radio ownership limits similar to the national minority ownership caps for radio.⁵⁵ In our most recent radio ownership proceeding, we revised our local radio ownership limits to permit a single owner to acquire up to two AM and two FM stations in markets with at least 15 stations, subject to a combined audience share limitation of 25 percent.⁵⁶ In so doing, we concluded that increased consolidation of ownership permits broadcasters to "combine administrative, sales, programming, promotion, production and other functions as well as to share studio space and equipment."⁵⁷ Consolidation can be especially useful at the local level due to the physical proximity of the stations involved. We believe that permitting greater local consolidation among minority and female owners of radio stations will enable them to more effectively compete with large, group-owned stations.

36. We note that minority broadcasters' initial entry in the industry is often achieved through acquisition of less costly stations, generally AM stations or Class A FM stations.⁵⁸ We therefore propose to permit a minority-controlled entity to own up to three AM stations of any type and up to three Class A FM stations in markets with at least 15 stations, subject to a combined audience share limitation of 30 percent.⁵⁹ We seek comment on this proposal and on any other proposals that would enhance minority and female ownership at the local level. We specifically ask for comment on whether we should adopt a national ownership cap for women similar to our national TV and

⁵⁵As noted previously, the national radio ownership rules permit a minority owner to own 25 AM and 25 FM stations – five AM and five FM stations in excess of the general national radio ownership limits. Second Reconsideration Order in MM Docket No. 91-140, FCC 94-267 (released Nov. 8, 1994).

⁵⁶See 47 C.F.R. § 73.3555(a); Memorandum Opinion and Order in MM Docket No. 91-140, 7 FCC Rcd 6385 (1992), reconsideration granted in part, FCC 94-267 (released Nov. 8, 1994).

⁵⁷Report and Order in MM Docket No. 91-140, 7 FCC Rcd 6387, 6388 (1992).

⁵⁸Class A FM stations are the lowest-powered type of FM stations, with a minimum effective radiated power (ERP) of 0.1 kilowatts. By way of comparison, full-power Class C FM stations must operate with a minimum ERP of 100 kilowatts. See 47 C.F.R. § 73.211.

⁵⁹For purposes of the local radio ownership rules, a "market" is defined with reference to the principal community contours of the stations involved in a transaction. See Memorandum Opinion and Order in MM Docket No. 91-140, 7 FCC Rcd 6387, 6395 (1992).

radio ownership caps for minorities, or any other parallel proposal.

37. We are not inclined to propose permitting greater consolidation in smaller radio markets due to concerns about undue concentration of ownership. The same concerns persuade us not to propose a separate local ownership cap for TV, given that there are far fewer television stations than radio stations.⁶⁰ Further, we believe that an increase in the local radio ownership limits may be of more immediate benefit to minority and female broadcasters, who are more likely to own radio stations than more expensive full-power television stations.

38. We do believe, however, that further consolidation of TV station ownership at the national level would not necessarily harm competition in the industry nor pose a threat to diversity of viewpoint. The national TV ownership rules currently permit a minority owner to own 14 TV stations – two stations in excess of the general national TV ownership limits – with a combined audience reach of 30 percent or less.⁶¹ In a Further Notice adopted concurrently with this Notice, we seek comment on whether we should raise the national ownership limits for TV.⁶² Keeping that proceeding in mind, how should we modify the national TV ownership caps to provide additional incentives for minority and female ownership?

V. DATA COLLECTION

39. To help us assess the continued effectiveness of FCC minority and female ownership initiatives, we intend to develop more precise information on minority and female ownership of mass media facilities. In this regard, we seek comment on whether to revise our Annual Ownership Report form, FCC Form 323, to include a section requiring owners to identify their race or ethnicity and their gender. In addition, we note that minority broadcasters have argued that minority representation in the broadcasting industry may be reduced as a result of the Commission's recent relaxation of the radio duopoly rule.⁶³ We accordingly ask commenters to submit relevant data

⁶⁰As of October 31, 1994, there were 10,004 commercial radio stations and 1,158 commercial television stations licensed by the Commission. See FCC News Release, Broadcast Station Totals as of October 31, 1994, Mimeo No. 50616, November 10, 1994.

⁶¹47 C.F.R. § 73.3555(e).

⁶²TV Further Notice, *supra* note 41.

⁶³See, e.g., Petitions for Reconsideration of Report and Order in MM Docket No. 91-140 filed by LULAC, NABOB, TRAC; Petition for Reconsideration of Memorandum Opinion and Order in MM Docket No. 91-140 filed by LULAC, NABOB/NBMC.

regarding any apparent impact that increased consolidation of facilities resulting from relaxation of our multiple ownership rules has had on minority and female owners, including the impact of local marketing agreements (LMAs) between stations.

VI. CONCLUSION

40. With this proceeding, we intend to explore meaningful mechanisms for promoting minority and female ownership of mass media facilities by increasing economic opportunities for minorities and women. We also believe these policies will increase the diversity of programming disseminated to the public. By taking action now, prior to the advent of sweeping changes anticipated in the communications industry, we attempt to ensure that all segments of society will be poised to participate in the communications industry. Thus, we request that parties commenting on the proposals advanced in this Notice keep in mind the current and predicted composition of the mass media marketplace. Some of the proposed initiatives attempt to tailor policies and rules adopted in the past for use in the 21st century. Others propose entirely new avenues for bringing more minority and female owners into the industry. We do not expect the suggestions presented in this Notice to be all-inclusive, however, and we welcome any additional ideas commenters may have for increasing minority and female ownership.

VII. ADMINISTRATIVE MATTERS

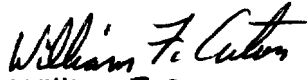
41. Ex Parte Rules – Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. See 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

42. Comment Information. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 17, 1995, and reply comments on or before May 17, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

43. Initial Regulatory Flexibility Analysis. See Appendix.

44. Additional Information. For additional information regarding this proceeding, contact Jane Hinckley Halprin or Diane Conley, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "William F. Caton". The signature is fluid and cursive, with the first name "William" and the last name "Caton" being more prominent than the middle initial "F".

William F. Caton
Acting Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

I. Reason for the Action: This proceeding was initiated to explore ways to increase minority and female ownership of broadcasting facilities.

II. Objective of this Action: The actions proposed in the Notice are intended to facilitate minority and female entry into mass media services, and are particularly aimed at increasing those groups' access to capital.

III. Legal Basis: Authority for the actions proposed in this Notice may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303.

IV. Reporting, Recordkeeping and Other Compliance Requirements Inherent in the Proposed Rule: The Notice seeks comment as to whether to add to the Commission's annual ownership report form a section in which owners would disclose their gender and their race or ethnicity.

V. Federal Rules Which Overlap, Duplicate or Conflict with the Proposed Rule: None.

VI. Description, Potential Impact and Number of Small Entities Involved: Approximately 11,000 existing television and radio broadcasters, approximately 11,000 cable television operators and approximately 150 MMDS operators of all sizes may be affected by the proposals contained in this decision.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The proposals contained in this Notice do not impose additional burdens on small entities.

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981)).